

THE LEONARD LETTER

*A weekly electronic newsletter about
California government, business and taxes
Bill Leonard, Member
State Board of Equalization*

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QUOTE OF THE WEEK

*“No man's life, liberty, or property are safe while the legislature
is in session.”—Mark Twain*

TAXING TIMES

*****Taxing to Your Health*****

To the Board of Equalization there is a big difference between health food and healthy foods. A constituent contacted me about a health nutritional supplement juice made from fruit. Because it is marketed as a nutritional supplement and a health enhancement, the California tax authorities have deemed it not to be food, which is exempt from sales tax, but to be tangible personal property, which is subject to the sales tax. This ignores the fact that this is a juice that people drink directly from the bottle and use as their morning meal. It would be interesting to see whether the revenueurs would still view this product as taxable if it were to be sold as a fruit juice or a breakfast drink with little or no advertising related to health.

*****Deadbeat Redemption*****

Several months ago, I wrote about the Board's top ten list of deadbeats—people who owed millions in back sales tax. I heard from so many of you who were frustrated that the state was not going after these people, so I wrote an article explaining that the list was fairly worthless since it was never updated and consisted mostly of people who had gone out of business and from whom we would never collect a dime. Turns out the list is in even worse shape than I thought. One person who found himself on the list, sought assistance from the BoE's Taxpayer Rights Advocate Office. The terrific staff at TRA was able to argue the taxpayer's case to the revenueurs on staff who thought the man owed money, and they won. Not only has staff determined that the man owes nothing, but he is

actually owed refunds on earlier collections. This man ended up on a list designed to create public pressure and humiliation even though the state owed him money. Perhaps some good will come of the absurdity of this: more people will know that the TRA is available to help taxpayers and that it does actually win cases. If you need help, call TRA at 1-888-324-2798.

UNDER THE DOME

*****Terrible Time for a Terrible Bill*****

Sometimes you just have to scratch your head. At a time when states like Texas and Nevada are sucking good businesses away from California right and left, some California legislators think it is good public policy to kick businesses in the teeth some more.

A.B. 1850 (Cohn) proposed new standards on reporting personal property taxes. The problem is, the bill seeks to create new record retention requirements that are virtually impossible for companies to meet. Most companies are transitioning from paper record retention to electronic because it is easier and less expensive. However, the bill would require California businesses' electronic systems to be designed so that "supporting documents, including purchase orders, sales invoices, shipping documents, construction permits and contracts, contractors' billings, equipment and premise lease agreements, cost segregation studies, credit memoranda, are readily available." These supporting documents do not even exist in most electronic systems. And to ask for this level of detail for personal property tax is just silly.

If that were not bad enough, the bill would also require companies to identify the location of all their tangible property. So even if you are a large company like Intel, this bill would give a county assessor the ability to demand that the company account for the location of a single laptop computer, whether it is in that assessor's county or not.

What purpose does it serve to increase ten-fold the compliance maze for a tax? I have a four-letter word for this bill: D-U-M-B.

When it came before the Assembly on May 18, the bill failed passage. However, it is up for reconsideration at a later date. Even if the bill were to pass, I cannot imagine our Governor signing it.

*****Tax Court Idea Not Catching On*****

The bill that proposed establishing a formal state tax court, A.B. 2472, was placed on the Assembly Appropriations Committee suspense file last Wednesday. Suspense is a kind of purgatory where bills that would require funding not accounted for in the Governor's budget get sent, usually to die. I am grateful that so many opponents worked tirelessly against this bill.

I testified against the bill and made these points known to the committee:

1. In contrast to criminal court, the burden of proof in tax appeals falls on the taxpayer who must prove the government is wrong. This is a standard of proof that is almost impossible for average taxpayers to overcome in a conventional court like the one proposed.
2. There are two existing state codes that give enormous leverage to the state to be used against taxpayers. The first grants immunity to our tax agency employees to commit torts against taxpayers (GovCode 860.2; read it for yourself at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=00001-01000&file=860-860.4>). The second allows tax authorities to threaten taxpayers into settling cases or embarrass them with the public release of their confidential tax return (R&T Code 19545; see <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=18485717349+0+0+0&WAIAction=retrieve>).

The Board of Equalization is one way that California balances the power of the state by hearing from taxpayers with the least formality possible. The BoE provides a forum where any taxpayer can present extenuating circumstances to be considered by elected officials who are allowed to consider the information and apply it to a remedy that they believe to be fair and lawful. A formal tax court would make worse the imbalance against taxpayer rights, and I am pleased that enough legislators saw this and decided to send this bill to suspense.

*****Kudos on Part-Time Proposal*****

With Governor Schwarzenegger's reform-minded approach to California government, many observers of politics are eager to switch to a part-time legislature. I share their enthusiasm, and commend the reasons articulated by Richard Rider. Rider points out that when we switched to a full-time legislature from part-time in the 1960's there was an immediate 40% increase in the number of laws passed. He then reminds readers of Parkinson's law: "Work expands so as to fill the time available for its completion." Most states in the country have legislatures that meet only for about four months per year. However, of the 20 states that have expanded legislative sessions, 13 have raised taxes during the last two years. Three additional states with lengthy legislative sessions -- New York, Missouri, and South Carolina -- have been debating tax increases recently.

Rider then asks why legislatures that meet longer end up raising taxes. His response: "Because the Parkinsonian 'work' lawmakers do to fill the time allotted to them consists to a large extent of sitting in committee meetings at which a parade of government managers, state employees, and special interest lobbyists make the case for how much their pet program is 'needed' and would be 'sliced to the bone' unless the state raises taxes. Other 'work' involves dreaming up new programs or pork barrel projects to attract media attention."

This has certainly been the case in California, and I hope we are soon able to correct course and return to a part-time legislature that gets important, necessary work done quickly and leaves the “Parkinson’s” work and excess taxes behind.

*****The Sincerest Form of Flattery?*****

While imitation may be the sincerest form of flattery, to the person being imitated in the state legislature it looks more like theft. When the majority party likes a bill introduced by the minority, they simply take it. That is what has happened to a great idea proposed by Assemblyman Bob Dutton and others who have been pushing hard for the reinstatement of the Manufacturers Investment Tax Credit (MIC). They have been so successful in making the argument that the MIC is a great job generator and economic stimulus that it is one of the only tax cuts passed by the Assembly Revenue and Taxation Committee this year. However, when the bill came out of committee, Dutton was no longer the author. Since he cares more about the tax policy than having his name on the bill, he is as excited as if it was his own bill that passed. One can only hope that the new author is as hard working as Bob Dutton has been in pushing for this important tax credit to be extended.

BOE AND LEGISLATIVE DATES

May 24, 2004 --- First prepayment deadline for 2nd quarter sales and use tax accounts

May 25-26, 2004 --- BoE meeting in Sacramento

May 28, 2004 --- Last day for Assembly to pass Assembly bills and for the Senate to pass Senate bills.

May 31, 2004 --- Memorial Day

June 15, 2004 --- Budget bill must be passed by midnight

June 15, 2004 --- Quarterly due date for estimated income taxes

June 15-17, 2004 --- BoE meeting in Culver City

June 19, 2004 --- Juneteenth Celebration of the historic time in 1865 that slaves in Texas received the word that President Lincoln had issued the Emancipation Proclamation on January 1st, 1863 making them free.

NOTABLE DATES/ HISTORY

May 24, 1844 --- **Samuel F.B. Morse** opened America's first telegraph line between Washington, D.C. and Baltimore, MD, with the message "What hath God wrought?"

May 25, 1961 --- President John F. Kennedy pledged to put a man on the moon by the end of the decade

May 26, 1787 --- Constitutional Convention began in Philadelphia

May 16, 1868 --- The impeachment trial of U.S. President Andrew Johnson ended in acquittal on all remaining charges, since the Senate again fell one vote short of the two-thirds majority needed for conviction.

May 26, 1521 --- Martin Luther was banned by the Edict of Worms for his writings and religious beliefs

May 27, 1647 --- The first recorded execution of a "witch" takes place in the Massachusetts colony

May 28, 2002 --- The last steel beam still standing after the September 11, 2001 terrorist attacks on the World Trade Center was removed.

May 28, 1937 --- San Francisco's Golden Gate Bridge opened to vehicular traffic

May 29, 1973 --- Tom Bradley was elected the first black mayor of Los Angeles

May 29, 1790 --- Rhode Island became the 13th colony to ratify the U.S. Constitution

May 30, 1922 --- The Lincoln Memorial was dedicated in Washington, D.C. by Chief Justice William Howard Taft

May 30, 1868 --- The first Memorial Day (originally known as Decoration Day) is observed in the U.S.

GENERAL TAX INFORMATION

For answers to your general tax questions, call the Board of Equalization information center. Customer service representatives are available to help you from 8:00 a.m. to 5:00 p.m. Pacific time, Monday through Friday (except state holidays).

Toll-free number: 800-400-7115
TDD service for the hearing impaired
TDD phones: 800-735-2929
Voice phones: 800-735-2922

To reach the Taxpayer Rights Advocate's office, call toll-free 1-888-324-2798.

HOW TO CONTACT ME

Bill Leonard
Board of Equalization
400 Capitol Mall, Suite 2340
Sacramento, CA 95814
Telephone: (916) 445-2181
Fax: (916) 327-4003

Email: bill.leonard@boe.ca.gov